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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION

DRAKES BAY OYSTER COMPANY *et al.*

Plaintiffs,

v.

S.M.R. JEWELL, in her official capacity as
 Secretary, U.S. Department of the Interior, *et al.*

Defendants.

Case No. 12-cv-06134-YGR

**JOINT STATUS UPDATE AND
 REQUEST RE: CASE MANAGEMENT
 CONFERENCE**

Date: July 7, 2014

Time: 2:00 p.m.

Court: Hon. Yvonne Gonzalez Rogers,
 Courtroom 1, Oakland Courthouse

JOINT STATUS UPDATE

On February 4, 2013, this Court issued an Order Denying Plaintiffs' Motion for Preliminary Injunction (Doc. #89).

On February 6, Plaintiffs filed a Notice of Appeal from that Order (Doc. #90).

On February 25, the Ninth Circuit Court of Appeals issued an Order, inter alia, granting Plaintiffs an injunction pending appeal and expediting the calendaring of that appeal.

On September 3, the Ninth Circuit Court of Appeals issued an opinion affirming this Court's Order Denying Plaintiffs' Motion for Preliminary Injunction.

On September 20, this Court issued an Order (Doc. #111) that, inter alia, noted that "Plaintiffs represent they intend to petition for rehearing en banc," stayed this action pending the Ninth Circuit's ruling on Plaintiffs' petition for rehearing en banc, continued the case management conference to November 18, and ordered in pertinent part that:

If the Ninth Circuit has ruled on the petition prior to the conference, the Court will determine whether a further stay is appropriate at that time.

If the Ninth Circuit has not ruled on Plaintiffs' petition for rehearing by five (5) business days prior to the conference, the parties shall submit a joint status update by that date so informing the Court.

On October 18, Plaintiffs filed a petition for rehearing en banc.

On January 14, 2014, the Ninth Circuit Court of Appeals denied Plaintiffs' petition for rehearing en banc and issued an amended opinion affirming this Court's Order Denying Plaintiffs' Motion for Preliminary Injunction.

On January 20, 2014, Plaintiffs filed a Motion to Stay the Mandate Pending Petition For Certiorari (FRAP 41(d)(2)(A)). On January 27, the Ninth Circuit granted Plaintiffs motion to stay the mandate, over Defendants' opposition.

On April 11, 2014, Plaintiffs filed a petition for a writ of certiorari to the United States Supreme Court; Defendants filed their response on May 27, 2014.

On June 30, 2014, the United States Supreme Court issued an Order denying Plaintiffs' petition for a writ of certiorari.

1 Immediately thereafter, on June 30, 2014, the Ninth Circuit Court of Appeals issued the
2 Mandate in this case.

3 **JOINT REQUEST**

4 Having met and conferred through counsel by telephone, Plaintiffs and Defendants agree
5 that the Court should keep the Case Management Conference currently scheduled for July 7,
6 2014, on calendar.

7 Plaintiffs' Statement: Plaintiffs have not yet heard from Defendants what position
8 Defendants take on post-appeal issues, such as continued operation of the oyster farm. In
9 November 2012, Defendants authorized Plaintiffs to continue operations for 90 days, subject to
10 specified conditions. In February 2013, Plaintiffs informed Defendants of Plaintiffs' position that
11 the injunction issued by the Ninth Circuit restored the parties to the status quo ante as of
12 November 2012. Plaintiffs understand that Defendants will be providing a letter identifying
13 Defendants' position on post-appeal issues, and Plaintiffs expect to be engaging in sufficient
14 discussions with Defendants before the case management conference on July 7 so that the parties
15 will be in a position to provide the Court with meaningful information about how the case is
16 likely to proceed and whether the Court's assistance is likely to be needed.

17 Defendants' Statement: Defendants will shortly send Plaintiffs' counsel a letter
18 requesting that the parties enter into discussions concerning the prompt and orderly wind-down of
19 Plaintiffs' operations.

20 Thus Plaintiffs and Defendants agree that it would assist the Court for the parties to
21 provide their views regarding next steps, including on any discussions the parties may have prior
22 to the July 7 case management conference and whether the briefing schedule previously approved
23 by the Court (Doc. # 113) should be modified in any way.

24 Accordingly, Plaintiffs and Defendants respectfully request that the Court hold the Case
25 Management Conference on July 7, 2014, at 2:00 p.m. as previously scheduled.

26 /////
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1 Respectfully submitted this 30th day of June, 2014.

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3 United States Attorney

4 ALEX TSE (CSBN 152348)

5 Chief, Civil Division

6 SAM HIRSCH

7 Acting Assistant Attorney General

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13 Trial Attorneys

14 Attorneys for Defendants

15 BRISCOE IVESTER & BAZEL LLP

16 By: Peter S. Prows (per authorization)

17 PETER S. PROWS, Esq.

18 Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on June 30, 2014, I electronically filed the “Joint Status Update and Request Re: Case Management Conference” with the Clerk of Court using the ECF system, which automatically will send email notification to the attorneys of record.

/s/ Stephen M. Macfarlane
STEPHEN M. MACFARLANE